THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.35840 OF 1997

DATE: 27-6-2007

Between:

S.Prabhakara Rao ... Petitioner

And

The Divisional/senior Manager (operations)
APSRTC, Eluru, West Godavari Dist. .. Respondents

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.35840 OF 1997

ORDER:

Seeking a direction that he be absorbed as a cleaner in the services of the respondent – Corporation the petitioner has invoked this Court's jurisdiction.

The petitioner is a displaced employee having worked as a cleaner on a private bus bearing Registration No.AH 2426 hitherto plying between Kaza and Vaddiparru in West Godavari District. He claims to have worked for about five and half years from 1.2.1983 to 29.8.1988. Consequent upon nationalization of the route with effect from 30.8.1988, and cancellation of the vehicle's permit, the petitioner was discharged from employment. The petitioner would contend that, while the respondent was required to absorb two drivers and four conductors and though the list of persons to be absorbed was sent to them, the petitioner was neither given a call letter nor a letter of appointment. Since his case was not considered for appointment as a displaced employee the petitioner filed W.P.15577 of 1996 and this Court disposed of the said writ petition on 6.8.1996 directing the respondent to consider his case for appointment as cleaner on the basis of list prepared in respect of un-absorbed candidates and till all the persons were absorbed in the same or equivalent posts, outsiders were not to be appointed. Thereafter, the petitioner is said to have submitted an application dated 28.8.1996 requesting the respondents to consider his case in the light of the order of this Court. The petitioner was called for interview on 25.3.1997 and thereafter was issued notice dated 25.3.1997 asking him to show cause why his request for absorption should not be rejected. The petitioner submitted his reply on 7.5.1997. However, the

respondents rejected the petitioner's claim by order dated 24.6.1997. Aggrieved thereby the present writ petition.

In the counter affidavit, filed on behalf of the respondents, it is stated that there is no provision for absorption of displaced cleaners into the service of the A.P.S.R.T.C in West Godavari District, that there was no vacancy available and that there was no necessity of absorbing cleaners and other artisans in West Godavari District. It is stated that the Selection Committee, which met on 17.11.1988 and 16.5.1989, had selected two drivers and four conductors according to the quota fixed in terms of Circular dated 10.11.1983 and that rejection proceedings were issued in R.C.L3/785(58)/96-RM/WG dated 24.6.1997 and communicated to the petitioner. Respondents would contend that the order of this Court in W.P. No. 5186 of 1997 related to absorption of cleaners in Prakasam and Nellore Districts where huge number of buses were displaced and in so far as West Godavari District was concerned, since very few routes were nationalized, a small number of buses displaced and large number of depots existed even at the time of nationalization, there was no need for absorption of maintenance staff.

Sri G.Krishna Rao, learned counsel for the petitioner, would submit that in view of the orders of the Division Bench which has also been referred to and relied upon in the order of the Learned Single Judge, the petitioner's case was required to be considered for absorption as cleaner and till all the candidates in the list were absorbed the respondent – Corporation was not entitled to resort to appointment of outsiders. Learned counsel would submit that,

in view of the orders of this Court, the petitioner should have been absorbed and that the respondents had acted illegally in rejecting the case of the petitioner for absorption.

Sri R.Manmadha Reddy, learned counsel for the respondent – Corporation, on the other hand, would place before this Court a copy of Circular No.PD-61/1998 dated 16.7.1998 wherein it is stated that since the Corporation was not in a position to absorb the displaced employees any more in view of its critical financial position, and as the Corporation was also making every possible effort to reduce the bus staff ratio on par with other State Road Transport undertakings in India, the matter was placed before the Board for taking further decision and that the Board, in its resolution No.56/1998 dated 15.5.1998, had resolved to impose a total ban on further absorption and appointment of displaced employees into the service of the Corporation.

Sri G.Krishna Rao, learned counsel for the petitioner would contend that, at best, the circular could have prospective application and since the petitioner's case was directed to be considered even prior to issuance of the said circular, the petitioner ought to have been absorbed as a cleaner in the service of A.P.S.R.T.C.

It is not for this Court to issue a mandamus directing the Corporation to create or abolish posts or to fill up vacancies even if available, for these are matters which are in the employer's realm. The Board of Directors of the Respondent – Corporation has resolved to impose a total ban on further absorption and appointment of displaced employees into service of the

Corporation in view of its critical financial position and the need to reduce the bus staff ratio on par with other State Road Transport undertakings in India. In the light of such a decision being taken by the Board of Directors and in the absence of any challenge thereto, this Court cannot ignore events, which have arisen subsequent to the aforesaid judgments of this Court, to issue a mandamus directing absorption of displaced employees of private buses, the routes of which were nationalized nearly two decades ago. This Court in W.P.No.15577 of 1996 dated 6.8.1996 had only directed that the petitioner's case be considered for absorption, and since the petitioner's case was considered and rejected and in the light of the fact that the Corporation has taken a policy decision in its resolution dated 15.5.1998 to impose a total ban on further absorption, the relief sought for in this writ petition cannot be granted. The contention of Sri G.Krishna Rao, that the Circular dated 16.7.1998 is only prospective and would not apply to cases where this Court had earlier directed consideration of the cases of employees for absorption, does not merit acceptance. Even if the Circular dated 16.7.1998 is held to apply prospectively, as the said circular is in force as on date, directing the respondents to absorb the petitioner into the service of the Corporation would run contrary to the said circular. The relief sought for cannot be granted.

The writ petition fails and is accordingly dismissed. No order as to costs.

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27-6-2007

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